

1 WO

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 Angela Castro,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-22-02046-PHX-JAT

ORDER

15 Pending before the Court is Plaintiff's motion to proceed in forma pauperis.
16 Regarding screening under 28 U.S.C. § 1915, this is a social security appeal over which
17 this Court has jurisdiction; and, on this limited record, the appeal is not clearly frivolous.
18 *See Kennedy v. Andrews*, 2005 WL 3358205, *2-4 (D. Ariz. December 8, 2005).

19 Regarding ability to pay, Plaintiff earns \$3,112.00 per month. (Doc. 2). Plaintiff's
20 living expenses total \$2,451.00 per month. (*Id.*) Thus, after paying all of her expenses per
21 month, Plaintiff has \$661.00 in disposable income. The filing fee for this case, that Plaintiff
22 is seeking to have waived, is \$402.00.

23 The Ninth Circuit Court of Appeals has discussed when a district court should grant
24 in forma pauperis status:

25 Pursuant to 28 U.S.C. § 1915(a), a plaintiff may commence an action
26 without paying the filing fees where she submits an affidavit stating that she
27 lacks sufficient funds and where her suit is not frivolous or malicious.
28 [footnote omitted] *Franklin v. Murphy*, 745 F.2d 1221, 1226 (9th Cir.1984).
An affidavit in support of an IFP application is sufficient where it alleges that
the affiant cannot pay the court costs and still afford the necessities of
life. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331, 339 (1948). The
IFP statute does not itself define what constitutes insufficient assets. As this

1 court has recognized, “[o]ne need not be absolutely destitute to obtain
 2 benefits of the in forma pauperis statute.” *Jefferson v. United States*, 277
 3 F.2d 723, 725 (9th Cir. 1960). Nonetheless, a plaintiff seeking IFP status
 4 must allege poverty “with some particularity, definiteness and certainty.”
United States v. McQuade, 647 F.2d 938, 940 (9th Cir. 1981) (internal
 quotation marks omitted).

5 ...
 6 As noted above, there is no formula set forth by statute, regulation, or
 case law to determine when someone is poor enough to earn IFP status.

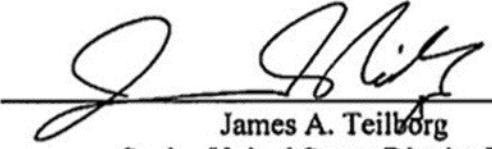
7 *Escobedo v. Applebees*, 787 F.3d 1226, 1234-36 (9th Cir. 2015). The Court of Appeals
 8 noted in its analysis: “Once [Escobedo’s] rent and debt payments were taken into account,
 9 she would have had to dedicate the entirety of two-months’ worth of her remaining funds,
 10 meaning that she would have to forego eating during those sixty days, to save up to pay the
 filing fee.” *Id.* at 1235.

11 Here, as stated above, Plaintiff has \$661.00 surplus each month after paying all of
 12 her living expenses. On this record, the Court finds that Plaintiff can pay the \$402.00 filing
 13 fee.

14 Accordingly,

15 **IT IS ORDERED** that Plaintiff’s motion to proceed in forma pauperis (Doc. 2) is
 16 denied. Within 10 days of the date of this Order, Plaintiff shall either pay the filing fee or
 17 the Clerk of the Court shall enter a judgment dismissing this case without prejudice.

18 Dated this 5th day of December, 2022.

19
 20
 21 
 22 _____
 23 James A. Teilborg
 24 Senior United States District Judge
 25
 26
 27
 28